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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 PARAMJIT SINGH BASRA,

10 Petitioner,

11 v.

12 STEPHEN SINCLAIR,

Respondent.

CASE NO. C18-186 TSZ-BAT

**ORDER DIRECTING PETITIONER
TO RESPOND BY SEPT. 27, 2018
REGARDING THE MIXED
HABEAS PETITION AND
STRIKING PENDING DEADLINES**

13 The Court asked petitioner to file briefs with respect to (1) the answer to his 28 U.S.C.
14 § 2254 habeas petition and (2) his motion to stay and abey while he pursued unexhausted claims.
15 Dkt. 16. Petitioner did not do so. Instead, petitioner moved to voluntarily dismiss his habeas
16 petition so that he could fully exhaust pending claims in state court and then return to federal
17 court later with a petition containing only fully exhausted claims. Dkt. 18. Respondent filed a
18 brief opposing the motion to stay and abey and not opposing the motion to voluntarily dismiss
19 the petition. Dkt. 19.

20 Because petitioner is proceeding *pro se*, the Court has grave concerns that petitioner is
21 not aware that by choosing to voluntarily dismiss his current habeas petition he may be
22 foreclosing his ability to pursue a habeas petition at all because a later § 2254 petition might be
23 barred by the one-year statute of limitations. *See* 28 U.S.C. § 2244(d)(1). The one-year limitation

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1 period generally begins to run from the date of the conclusion of direct review or “the expiration
2 of the time for seeking such [direct] review,” whichever is longer. 28 U.S.C. § 2244(d)(1)(A). In
3 this case, the limitations period began to run in July 2014, i.e., the last date on which petitioner
4 could have, on direct review, sought a writ of certiorari from the United States Supreme Court.
5 *See Bowen v. Roe*, 188 F.3d 1157 (9th Cir. 1999).

6 Although the one-year limitation period is tolled during the pendency of a “properly
7 filed” collateral state challenge to the state conviction, a personal restraint petition (“PRP”) is *not*
8 “properly filed” if it is dismissed as untimely under state law. 28 U.S.C. § 2244(d)(2); *Pace v.*
9 *DiGugliemo*, 544 U.S. 408, 414 (2005). Thus, the one-year federal limitations period ran from
10 July 2014 until petitioner filed his first PRP in 2015; the clock was stopped from 2015 until it
11 was fully resolved in 2017; and the limitations clock began running again in 2017. Petitioner’s
12 second, third, and fourth PRPs may *not* have stopped the habeas clock from running either
13 because they were fully resolved during the pendency of his first PRP in 2015 to 2017, or
14 because they were dismissed as untimely (or, in the case of the pending Washington Court of
15 Appeals Cause Number 78282-7-I, may be dismissed as untimely). Although the current habeas
16 petition was filed in February 2018, the federal limitations period does not stop running during
17 the pendency of a federal habeas petition. If petitioner dismisses his current habeas petition, he
18 will likely be time-barred from bringing one in the future.

19 There is no question that the present habeas petition is a “mixed petition” of exhausted
20 and unexhausted claims. Petitioner raises four arguments in his § 2254 petition: (1) his right to
21 be free from double jeopardy was violated when he was charged with two separate counts of
22 murder; (2) his statements to the police, after he was in custody but prior to being advised of his
23 Miranda rights, were involuntary and should not have been admitted as evidence; (3) he was

1 denied the right to testify by defense counsel's limitation of his questioning of petitioner on
2 direct examination; and (4) the trial court's jury instructions denied him the right to a unanimous
3 jury verdict. Dkt. 1, at 5–11. The parties agree that claim 3 (right to testify) was exhausted on
4 direct appeal and that claim 4 (right to a unanimous jury verdict) was exhausted in the fourth
5 PRP. Respondent contends that even if petitioner exhausts claim 2 (involuntary statement to
6 police) in his currently pending state court of appeals Cause No. 78282-7-I, claim 1 (double
7 jeopardy) would be unaffected and will remain both unexhausted and procedurally barred.

8 When faced with a mixed petition, a federal district court may generally exercise one of
9 three options: (1) dismiss the mixed petition without prejudice to allow the petitioner to present
10 his unexhausted claims to the state court and then return to federal court to file a new habeas
11 petition containing all of the claims; (2) stay the mixed petition to allow the petitioner to present
12 his unexhausted claims to the state court and then return to federal court for review of his
13 perfected petition; and (3) allow the petitioner to delete the unexhausted claims and to proceed
14 with the exhausted claims. *See Rhines v. Weber*, 544 U.S. 269, 274-79 (2005). By filing a
15 motion to voluntarily dismiss his current habeas petition, petitioner has expressed his intent to
16 request that the Court exercise option 1 and dismiss the petition without prejudice. The Court is
17 hesitant to grant petitioner's motion to voluntarily dismiss, however, because it is unclear that the
18 *pro se* petitioner recognizes the probability that by doing so he would be time-barred from
19 bringing another federal habeas petition at a later date. Petitioner appears to have abandoned his
20 motion to stay and abey this habeas action, thereby removing option 2. Petitioner has not yet
21 expressed an intent to utilize option 3 and delete the unexhausted claims 1 and 2 and proceed
22 only with the exhausted claims 3 and 4.

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1 The Court **ORDERS** petitioner to explain his clear intent to proceed with one of the three
2 options: (1) seek voluntary dismissal of this action fully informed that a dismissal *without*
3 prejudice may, in practical terms, be a dismissal *with* prejudice because a future habeas petition
4 may be time-barred; (2) move to stay and abey this matter so that he may exhaust claim 2
5 (involuntary statement to police) in state court fully informed that his current claim 1 (double
6 jeopardy) may be dismissed on the merits as unexhausted but procedurally barred; or (3) delete
7 the currently unexhausted claims 1 and 2 and proceed only with the exhausted claims 3 and 4.
8 Petitioner's responsive brief should be filed by **September 27, 2018**, and a failure to respond
9 shall be taken as a presumption that petitioner has abandoned his motion to stay and abey and
10 prefers to move for voluntary dismissal fully informed that a future habeas petition may be time-
11 barred. The Clerk is directed to **STRIKE** any pending deadlines in this matter.

12 DATED this 6th day of September, 2018.

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15 BRIAN A. TSUCHIDA
16 Chief United States Magistrate Judge
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